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This response concerns each of the five identical inquiries dated November 8, 2012, concerning 24-hour Schedule E reports of independent expenditures filed by the committee on, respectively, August 25, August 26, August 29, September 2 and September 5, 2012.

Each inquiry cites Advisory Opinion 2003-40 for the proposition that each report must be amended to ""state the primary election for each independent expenditure"" and advises that ""each State's Presidential primary is considered a separate election for purposes of aggregating independent expenditures.""

As your office surely is aware, all of the state presidential primaries had concluded long before these independent expenditures occurred, so there is no ""state"" primary election to list on amended reports. Each of the five reports at issue reported independent expenditures that occurred within 24 hours of the report, as required. In fact, these five Schedule E reports were filed on a 24-hour rather than 48-hour basis because, as required by 2 U.S.C. 434(1)(B) and 434(g), they occurred during the 20-day periods preceding the Democratic and Republican party presidential nominating conventions, which mark the true end of the Nation's primary election period because until a nominating convention acts there is no general-election candidate. The portion of AO 2003-40 that describes as the "general election" the period in a given state after its primary election has occurred cites no authority for that treatment; and, an advisory opinion, of course, cannot create a "rule of law." 2 U.S.C. 437f(b).

The committee will amend the five reports at issue in order to denote the general election instead, although we request that you inform us of any authority other than page 4 of AO 2003-40 to warrant the amendments, and we do not concede that the amendments are required. We suggest that the Commission provide greater clarity to the community at large concerning the distinction under various provisions of the Act between the primary and general election periods with respect to presidential candidates and the national nominating conventions.

We also urge that inquiries from your office to reporting committees not request amendments of reports that your office inevitably would then advise were contrary to the Act. This is both unfair and absurd.

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